

EXHIBIT 9

REDACTED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
: Master File No.
Global Brokerage, Inc. : 1:17-cv-00916-RA
F/k/a FXCM, Inc. :
Securities Litigation :
----- :

** C O N F I D E N T I A L **

REMOTE VIDEO DEPOSITION OF: JOSEPH S. PATT
THURSDAY, APRIL 23, 2020

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR

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2 this deposition.

3 (Deposition Exhibit 1, Amended Notice
4 of 30(b)(6) Deposition of Lead Plaintiff 683
5 Capital Partners, LP, was marked for
6 identification.)

7 Q. And it's the Amended Notice of
8 30(b)(6) Deposition for Lead Plaintiff 683
9 Capital Partners.

10 Can you access that?

11 A. Yes. I'm trying to use it -- yeah,
12 it looks like it's easier to do it in the website
13 itself. So I'll try that first.

14 Okay. Or maybe I should download it
15 to the -- yeah, you know, it's better in Adobe.
16 Okay, got it.

17 Q. Alright. And have you reviewed this
18 document before?

19 (The witness reads to himself out
20 loud.)

21 A. Notice of Deposition.

22 Q. Yeah. And if you turn to Page 4, it
23 gives a list of the matters upon which deposition
24 is requested for the 30(b)(6) witness.

25 A. I don't recall this. I knew I was

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2 being deposed because of communications with
3 attorneys. But I don't recall this specific
4 document.

5 Q. Okay. Have you reviewed the
6 categories that are listed on Page 4 and
7 following to Page 8?

8 A. Yes.

9 Q. Okay. And are you the person -- I'm
10 sorry.

11 A. Just scanning through it. Just
12 trying to get all of the way through it quickly,
13 through Page 4 and 8.

14 I believe, yeah, I believe so, yeah.

15 Q. Okay. And you're the person at 683
16 Capital who is most knowledgeable about these
17 categories of information; is that correct?

18 A. Yes.

19 Q. And as we discussed before, you're
20 authorized to speak on behalf of 683 Capital with
21 respect to these categories of information,
22 correct?

23 A. Yes.

24 Q. Okay. When did you first learn that
25 you had to give a deposition in this case?

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2 A. Within the last, you know, several
3 months.

4 Q. Okay. And who told you?

5 A. Our attorneys.

6 Q. Okay. And did you do anything to
7 prep for this deposition?

8 A. Yes.

9 Q. And what did you do?

10 A. Had meetings and conversations with
11 our attorneys and looked over some of the other
12 documents.

13 Q. Approximately -- when you said you
14 had meetings with your attorneys, which
15 attorneys?

16 A. The Rosen Law Firm, Phil and Josh.

17 Q. And how many times did you meet?

18 A. Specifically, about the deposition?

19 Q. Yes.

20 A. Once.

21 Q. And when was that?

22 A. Yesterday.

23 Q. And how long was it?

24 A. Two hours, maybe three -- two hours,
25 two hours.

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2 Q. And did you talk to anybody else in
3 connection with the preparation for this
4 deposition?

5 A. In preparation for the deposition,
6 no.

7 Q. Okay. Did you talk to anybody else
8 about your deposition today just generally
9 speaking, not as part of your prep?

10 A. Yeah, I mean, I told my family that I
11 would be doing a deposition and I told my
12 colleagues I wouldn't be reachable because I'm
13 doing a deposition.

14 Q. Okay. Any substantive conversations
15 about the categories with your colleagues?

16 A. No.

17 Q. And did you review any documents in
18 preparation for your deposition?

19 A. Yes.

20 Q. Which ones?

21 A. The complaints that were filed, the
22 certification, the -- some of the trading
23 history.

24 Q. Anything else?

25 A. That's -- that's what I recall.

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2 Q. Okay. And did reviewing the
3 documents refresh your memory about any of the
4 aspects of the lawsuit today?

5 A. Some, yes.

6 Q. Which ones?

7 A. More about the timeline, just trying
8 to remember all the events. There were a lot of
9 events involved in this investment.

10 Q. Okay. Any particular document that
11 helped you with the timeline?

12 A. The complaints and the trading
13 histories.

14 Q. Switching gears for a second, can we
15 just talk about your general background.

16 Can you walk us through your
17 education from college on?

18 A. Sure. I graduated from Yale in 1995
19 with an undergraduate in chemistry and a Master's
20 in chemistry. I took a year off. I then went to
21 Harvard Law School graduated with -- in 1999.

22 You just want education or is there
23 anything else?

24 Q. For now, we can do education.

25 A. Those are my degrees.

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2 But the other thing that we do is
3 that we, generally, try and be nimble and quick
4 in places where there's -- how do I say this --
5 dislocation or distress, where people are, you
6 know, acting emotionally for whatever reasons and
7 we can try and take the other side of that. We
8 try and look for situations like that.

9 Q. Okay. And how many clients do you
10 manage money for at 683 Capital?

11 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18 Q. Okay. So is that invested in any --
19 just generally in the company or in particular
20 investment funds in the company?

21 A. We have only one investment fund --
22 (Stenographer clarification.)
23 (There is a discussion off the
24 record.)

25 Q. So, I think, the next question I

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2 expressed in the marketing materials that you
3 would send to clients?

4 A. Yeah, or in the LP agreement.

5 Q. And who at 683 Capital would have
6 access to the marketing materials and LP
7 agreements?

8 A. I mean, Mimi does, but we all do have
9 access to it.

10 MR. ISAJIW: Okay. I don't think
11 we've seen either of the marketing materials or
12 LP agreements. [REQUEST] So, Phil, if we can
13 talk about that later, but we would like to
14 request those.

15 MR KIM: Yeah, we'll take the request
16 under advisement and then if we can talk about
17 it, you know, post-depo.

18 (INAUDIBLE COMMENT MADE BY WITNESS.)

19 Q. And the decision make strategy for
20 683 investment -- 683 Capital's investment, in
21 terms of risk tolerance or the types of
22 investments you're looking at, is that documented
23 anywhere?

24 A. We have very vague and wide
25 flexibility. Our investors know that we move

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2 around a lot.

3 Q. In connection with the FXCM
4 investments, can you walk me through the
5 decision-making process between you and
6 Mr. Zweiman in connection with the deciding to
7 invest initially in a company?

8 A. So, as I believe we described
9 earlier, like we saw the Swiss franc crash. We
10 both saw news stories about it. We read it. We
11 talked about what it meant. We looked into the
12 filings. We looked into the documents and the
13 indentures and together we concluded that it
14 seemed like this was a good risk reward to own
15 the bonds.

16 Q. So when -- would you view this as
17 investing in a distressed company at the time you
18 made the investment?

19 A. Yes.

20 Q. And is that something that 683,
21 typically, does?

22 A. Often does.

23 Q. Do you have a rough sense of
24 percentage of investments that are in distress
25 companies at 683 right now?

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2 [REDACTED]

3 Q. And is the -- was the SNB Flash Crash
4 an example of one of the "dislocations" you were
5 discussing earlier?

6 A. Yes.

7 Q. Okay. And can you just explain to me
8 just so I better understand what you mean when
9 you say "dislocations"?

10 A. So a moment when investors in some
11 asset sort of wake up or because FX decided it
12 isn't actually what they were invested in and so
13 they're selling for emotional or panic reasons as
14 opposed to analytical reasons.

15 People who are used to investing in
16 something, a bond at par, you know, don't like
17 when it trades at 50 or, I mean, nobody does.
18 But it doesn't fit their business model often.

19 Q. So you're looking to capitalize on
20 those situations?

21 A. Yes.

22 Q. And how do you monitor individual
23 investments for performance once you've invested?

24 A. I mean, lots of different ways. We
25 follow the public filings. We -- as we discussed

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2 before, sometimes we talk to management.

3 Sometimes we talk to research analysts who watch
4 the stock prices or the bond prices, I mean.

5 Q. You said you talk to research
6 analysts and not just look at their research but
7 you actually can pick up the phone --

8 A. Sometimes both, I mean -- yes, both.

9 Q. Does 683 Capital use investment
10 managers at all?

11 A. No. You mean outside managers to
12 manage --

13 Q. Yes.

14 A. Puts the capital with other people,
15 no.

16 Q. Yes.

17 A. No. I mean, one could argue say
18 anytime you invest in say Coke-a-Cola, the
19 management team of Coke-a-Cola is your investment
20 manager for that business but...

21 Q. I guess that is theoretically an
22 argument one can make. But I was referring to
23 contractually putting capital with investment
24 managers outside of the firm.

25 A. No.

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2 Q. And is any portion of 683 Capital
3 portfolio passively managed?

4 A. No, not by the definition of
5 "passive," no.

6 Q. So we referred to the "SNB Flash
7 Crash" a couple of times.

8 What is your understanding of that
9 event?

10 A. Yeah, up until then the -- up until
11 that day, everybody thought that the Swiss franc
12 would be pegged to a certain level of the Euro.

13 And I said, you know, nah, and then
14 let it re-peg at a different price. And it
15 seemed that way --

16 Q. Okay. And what was -- what was the
17 effect on --

18 A. -- 40 percent movement today.

19 What?

20 Q. I'm sorry, I think you were just
21 answering.

22 A. Yeah, I think there was a 40 percent
23 move today in that moment. I mean, it happened
24 over night.

25 Q. What was your -- and what was your

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2 understanding of that event's effect on FXCM?

3 A. So my recollection was and based on
4 what they said was, you know, they had clients
5 that were say short the Swiss franc on a very
6 levered basis. The Swiss franc moved, you know,
7 in an unprecedented fashion. It moved through
8 all their clients' equity, well-passed whatever
9 their clients could pay back and they were --
10 they had counterparties and they suffered a loss
11 as a result because it became their loss, once it
12 moved enough through their client's equity.

13 Q. And so why would that make -- why
14 would you be interested in investing in FXCM at
15 that time?

16 A. Because at that moment then -- they
17 announced how much their losses were or they said
18 their losses were. You could look at their
19 balance sheet based on the public filings. You
20 could see that they were getting, you know, a
21 rescue financing from Leucadia. So they weren't
22 going to have to, like, liquidate immediately.

23 And there was information based on
24 the money that was coming in and statements
25 around that that you could value their assets

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2 based on what they said and for what their
3 business had been worth based, again, on what
4 they said and it looked like you were well
5 covered, that the bottoms were easily going to
6 recover a hundred cents on the dollar and they
7 were trading in the 40s, I believe.

8 Q. Okay. So what FXCM securities did
9 683 Capital purchase at that point?

10 A. The convertible bonds, convertible
11 notes.

12 Q. The Rule 144A notes?

13 A. I thought they were registered.
14 That's my recollection. Am I incorrect?

15 I think the 144A, when they were
16 issued and then became -- I may be wrong about
17 this. So it's a long time since -- a long time
18 since we did this.

19 But I thought they were issued maybe
20 144A and then had become registered, because they
21 were convertible. So they had stock underlying
22 them. So the typical pattern on a convertible
23 bond is -- like that it is gets issued as a 144A
24 and then it's quickly -- registered in the next
25 six months or it becomes registered just by the

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2 waiting period, so -- and they were over
3 six-months old those bonds so...

4 Maybe I'm wrong. I just -- that's my
5 recollection.

6 Q. Okay. Any other securities?

7 A. That we bought in the company, no.

8 MR. ISAJIW: Okay. I'm going to
9 introduce -- I think, we're at Exhibit 8 -- the
10 Memorandum of Law in support of 683 Capital
11 Partners and Shipco's motions to consolidate the
12 related actions and appoint Co-Lead Plaintiffs.

13 Ashley, can you help me with that?

14 (Deposition Exhibit 8, Memorandum of
15 Law in Support of Motion of 683 Capital Partners,
16 LP and Shipco Transport Inc. To: (1) Consolidate
17 Related Actions; (2) Appoint Co-Lead Plaintiffs;
18 and (3) Approve Co-Lead Plaintiffs' Selection of
19 Counsel, was marked for identification.)

20 MS. DePALMA: It should now be
21 introduced.

22 A. This is -- I'm downloading it now.
23 Hold on.

24 Okay. This is Exhibit 8, yeah, okay.

25 Q. And so you'll see at the top, there's

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2 a Page No. 1 of 10 and it also --

3 A. Yeah.

4 Q. -- says that this was filed April 10,
5 2017.

6 A. Yeah.

7 Q. If you flip to page -- I want to
8 point you to Exhibit 2 of this document --

9 A. Uh-huh. Yep.

10 Q. -- which could be your certification.

11 A. Yes.

12 Q. Okay. So we mentioned -- I was
13 asking before about other types of securities in
14 FXCM that you purchased?

15 And before we dive into this
16 document, other than the bonds, did 683 Capital
17 trade in any other FXCM securities, as far as you
18 know?

19 A. We traded in the stocks and, I think,
20 we might have traded some options. I can't
21 remember I have a hazy recollection that we did,
22 but I don't remember exactly.

23 Q. So, if you look at the document that
24 we just marked as Exhibit 8, Paragraph 4 of your
25 certification indicates that, "The following is a

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2 list of purchases and sales I have made in FXCM
3 notes during the class period as set forth in the
4 complaint. I have made no transactions during
5 the class period in the debt or equities
6 securities that are subject of this lawsuit
7 except for those set forth below."

8 And then attached it says, "See
9 attached." And attached on the next page is
10 "Schedule A of 683 Capital Partners Transactions
11 in Global Brokerage Inc., 2.25 percent," dated
12 6/15/18 CVT.

13 Do you see that?

14 A. Uh-huh.

15 Q. Did you prepare this document?

16 A. No.

17 Q. Who prepared it?

18 A. I believe our attorneys.

19 Q. Did you review the document before it
20 was submitted?

21 A. Yes.

22 Q. Okay. And did you do anything to
23 verify that the information there is correct?

24 A. I just looked at my memory, which
25 turned out to be incorrect because there's some

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2 things here that were not trades but were
3 actually transfers between our PBs.

4 Q. Okay. And that's one of the things I
5 wanted to ask you so I understand it.

6 If you look at Schedule A, there is
7 -- one, two, three -- four transactions in
8 August 27, 2015.

9 A. Uh-huh.

10 Q. One, two -- three transactions in
11 December 15, 2015.

12 Can you explain to me whether or not
13 those are purchases?

14 A. I can't -- I can't without looking at
15 the schedule of our confirms. But I know that we
16 were transferring back and forth between PBs just
17 the balance assets at some point.

18 So I don't believe -- I just don't
19 remember which were actual purchases, other than
20 the stuff at the beginning, which were clearly
21 purchases. And the sales were -- clearly looked
22 like they were clearly the sales. But I just
23 don't remember which were transfers and which
24 were purchases.

25 Q. So, at least, some of these were

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2 transfers as opposed to purchases?

3 A. Yeah. And my belief is that we
4 corrected all that, like, our -- we -- 683 worked
5 with the attorneys to make sure we got it right
6 when we corrected it.

7 Q. And we'll take a look at the other
8 documents too. I'm just trying to understand.

9 When you say there were "transfers,"
10 what does that mean?

11 A. Sure. So we -- at the time in 2015,
12 we had two brokers, basically, main brokers,
13 prime brokers for us. I say "prime," but we had
14 two of them, Goldman Sachs at the time and Credit
15 Suisse at the time.

16 And so we moved some bonds from one
17 to the other. I just don't remember which, to
18 equalize assets, to optimize our margin, just our
19 normal portfolio balancing, if you will.

20 Q. So they weren't new purchases of the
21 bonds, they were just storing the bonds at
22 different prime brokerage accounts?

23 A. Yeah, there was no market transaction
24 of any sort, no economic effect for investors.

25 Q. Okay. And you've used the acronym

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2 point, then how much we would have ultimately
3 lost.

4 Q. Okay. But it's not -- that is math
5 you can do from this sheet, but it's not
6 summarized in this sheet?

7 A. I don't see it in this sheet, but you
8 can, certainly, do it from this sheet.

9 Q. Okay. And if you look at -- again,
10 still focusing on the bond portion of this sheet,
11 in October of 2015, there are additional buys of
12 the 2.25 percent --

13 A. Correct.

14 Q. What was the rationale for purchasing
15 at that point?

16 A. Price again.

17 Q. Can you explain that in more detail?

18 A. Yeah, price had come down quite a
19 bit. Time had passed a bit, so the yield was a
20 lot higher. We had been following the company
21 and they had been, you know, achieving some of
22 their sales and milestones. Money had been going
23 back to Leucadia. So the money was senior to us
24 was coming back. We were more optimistic in the
25 value of the business and the value of our

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2 securities.

3 Q. So, other than price, any other
4 decision -- sorry, let me ask that slightly
5 better.

6 Any other information -- did you
7 analyze any other information in connection with
8 your decision to buy bonds in October of 2015
9 other than the price?

10 A. Well, the continuing public filings,
11 which, as I mentioned, there had been
12 announcements.

13 I don't remember the details anymore.
14 It was a long time ago. And it was a really
15 complicated situation.

16 But there had been continuing filings
17 about what businesses FXCM had been able to sell,
18 what assets they had been able to realize, how
19 much they had been able to pay down the Leucadia
20 rescue loan and what that meant for the -- what
21 we thought that meant for the ultimate value of
22 our bonds; all of which had been done in
23 ignorance of, you know, what they had actually
24 been doing with their business.

25 Q. And then if you look at the end of

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2 this sheet, we have a cell of bonds in February
3 of 2017.

4 A. Yes.

5 Q. So what was the rationale for selling
6 in February of 2017?

7 A. I mean, that was after they announced
8 they had been banned in the US, which radically
9 changed our value -- the value proposition of
10 this business and this security and, frankly, you
11 know, angered us.

12 But that's not why we sold it. We
13 sold because it changed our value analysis.

14 Q. So it was, again, a price-based
15 decision?

16 A. An information based -- I mean, the
17 price was terrible, information relative to
18 price. Information was these guys had been lying
19 about their core business. They just admitted it
20 in a regulatory filing and they were banned from
21 doing business in the US and paid a fine. This
22 business was worth a lot less.

23 Q. And did you sell all of your holdings
24 in FXCM at that point?

25 A. No.

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2 Q. What portion of your holdings did you
3 sell?

4 A. According to this, 2 million, which
5 comports with my recollection.

6 Q. And, roughly speaking, what
7 percentage is that?

8 A. 2 out of the 17. So 2 out 16 would
9 be one-eighth, which is 12 and a half. So two of
10 17 is like I don't know --

11 (Stenographer clarification.)

12 A. Well, the sum total here is 15
13 million, right. We sold two, which means we had
14 17 million before that. So we sold two out of
15 17. Two -- I can tell you the 2 out of the 16 is
16 12 and a half percent. So 2 out of 17 is
17 slightly less than that. Again, that's in
18 nonrational numbers that I can also tell you.

19 Q. Okay. And can you walk me through
20 some of the logistics of selling these bonds and
21 purchasing these bonds?

22 Does 683 Capital call a dealer
23 directly?

24 Do you e-mail your prime broker?

25 How do these transactions actually

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2 work?

3 A. The prime broker -- the prime broker
4 is just where we custody. They're not involved
5 in the pretrade or trade execution, just in the
6 after market -- after effect, if you will.

7 We would -- so various brokers
8 sometimes call us, sometimes we call them. They
9 are often running -- they send runs. So, like, I
10 have a Bloomberg terminal at work and I have one,
11 you know, a virtual one here and, you know, when
12 we're working remote.

13 And on that Bloomberg terminal, we
14 get messages that, basically, literally one --
15 dozens a minute, frankly, from all sorts of
16 dealers about all sorts of securities and you
17 sort of do a scan; hey, oh, who is making markets
18 or showing indications on Global Brokerage or
19 FXCM.

20 And, you know, we saw the news and
21 we're like, let's see where they're trading, see
22 if we can get rid of some and at what price.

23 Q. Okay. And so, when you say you're
24 looking at a Bloomberg terminal, you're seeing
25 which brokers are offering the purchase or sale

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2 of these securities at what price?

3 A. And they were advertising they're
4 involved, they're interested. It depends on the
5 security, the liquidity of the security, the
6 facts around the security, whatever day it is.

7 Like, on a super liquid, like, bond,
8 it might just all be like electronic or a stock.
9 But on this, like, you know, they'd be, like, oh,
10 on bid 30 and offered at 40, 1 million up, call
11 to discuss.

12 I don't know. I'm making up, you
13 know. It would be really wide. It would involve
14 a conversation. It wouldn't be -- almost all
15 these involved conversation -- they all involved
16 conversations. But they, you know, would be
17 triggered by, effectively, a Bloomberg e-mail, if
18 you will, a Bloomberg mail.

19 Q. Okay. So, for the FXCM bonds at
20 issue here, they were the type of transactions
21 that would require a call with a broker to
22 discuss the purchase or sale because they're not
23 a super liquid security like other bonds may have
24 been?

25 A. Correct. I would say mostly a call

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but also times an instant message or an instant Bloomberg is what they would call it, but direct communication not like something that happens over -- like when you trade stock personally in Fidelity or something or when we trade stock, our fund.

Q. Does the FXCM notes trade frequently in your experience?

A. No.

Q. Were you in a position that you could always buy or sell the quantity you wanted to buy or sell immediately?

A. No.

Q. What were the limitations on that?

A. You had to make a conversation and the spread could be, you know, point a wide, half a point wide, four points wide, ten points wide in really bad markets.

Q. And you're having conversations with individual brokers.

How many brokers did you discuss FXCM notes trades with?

A. Probably three or four over the years.

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2 Q. And who were they?

3 A. I can look on the this list and I can
4 see we traded with Credit Suisse, J.P. Morgan,
5 GMP, CRT, Goldman. That's everybody.

6 Q. And that's under the "Broker" column
7 of this spreadsheet that we're looking at
8 Exhibit 12, correct?

9 A. Yep.

10 Q. Was there any kind of centralized --
11 I'm sorry?

12 A. I'm certain we traded with Jefferies
13 too. So I don't know why that's not there.
14 There may be some -- so...

15 Q. Do you know, roughly, the dates that
16 you would be trading with Jefferies?

17 A. Actually, I'm not -- yeah, in the
18 first couple of trades. I have a feeling -- I
19 don't know why it was says Credit Suisse there.
20 I think those are all Jefferies trades to be
21 perfect -- from my recollection.

22 Q. Where would you -- if we wanted to
23 confirm one way or the other whether it was
24 Credit Suisse as a broker or Jefferies as a
25 broker, what information would we look at?

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2 A. The actual confirms or -- and the
3 account statements from back then.

4 Q. And where are the confirms or account
5 statements from back then stored at 683?

6 A. Our CFO knows where they are. He has
7 them.

8 Q. And so the confirms will just list
9 who the executing broker is and we can confirm
10 one way or the other.

11 A. Yeah.

12 Q. But you think Jefferies is missing
13 from this list?

14 A. I think the original trades at say
15 Credit Suisse not the later ones. But I think my
16 recollection is that they're Jefferies.

17 Q. So you think it these trades with a
18 different broker, as opposed to trades that are
19 not listed here?

20 A. Oh, yeah.

21 Q. Okay.

22 A. Yeah. I -- there shouldn't be a
23 mistake in the trades, just the broker.

24 Q. Okay.

25 A. And I may be wrong. I'm just -- my

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2 Q. To me it would be helpful if you
3 could just explain to me when you buy an option,
4 what type of financial contract are you making?

5 A. When you buy a call option, you're
6 betting -- you say paying a small amount now for
7 the right to buy the stock at some price at
8 anytime between now and the expiry and that stock
9 price is the strike price.

10 Q. Yeah, a predetermined strike price?

11 A. Yes, a predetermined strike price.

12 Q. So, in that situation, you have the
13 right but not the obligation to purchase the
14 security, if the price does hit the strike price?

15 A. Correct.

16 Can I --

17 Q. So how does -- I'm sorry?

18 A. -- have 30 seconds to approve our
19 firm's, you know, payments today just to go -- I
20 just got a text.

21 Q. Sure.

22 A. Is that okay? I'll be really quick.

23 MR. ISAJIW: [REQUEST] And, Phil,
24 while he's doing that, I don't think we've seen
25 any of the confirms and we would be interested in

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2 getting a production of these trades that would
3 include the options, if possible. So, again,
4 just wanted to make a request and we can talk
5 about it after the deposition.

6 MR KIM: Yeah, we can talk about it
7 afterwards. I mean, I think, those transactions
8 are reflected in the account statement. So I
9 don't know why you would need another piece of
10 paper, but we can discuss it later.

11 A. I'm back. Thank you. I just need
12 to...

13 Q. Understood.

14 So, I guess, what I'm trying to
15 understand is in the overall trading strategy of
16 683 Capital in connection with the FXCM
17 Securities, 683 is purchasing notes. It is
18 shorting securities -- I'm sorry. It is shorting
19 common stock. It is --

20 A. Sometimes.

21 Q. -- purchasing -- "sometimes." It is
22 buying call options and other options.

23 First of all, any other transactions
24 related to FXCM securities that were missing?

25 A. Not that were -- not that I recall.

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2 I mean, I think you've got them all in the
3 statements but...

4 Q. Okay. So how do all those different
5 types of securities transactions fit into an
6 overall strategy? That's what I'm trying to
7 understand.

8 A. Sure. We thought that the bonds were
9 really really cheap and we wanted to own as much
10 of them as we can risk tolerate. And at various
11 points we changed our mind as to whether or not
12 the stock was cheap relative to the bonds, cheap
13 on its own or expensive.

14 Q. Okay. So you thought the bonds were
15 worth more than their current market price, the
16 stock --

17 A. By a lot.

18 Q. By a lot?

19 A. Based on the filings that had been,
20 you know, that we read.

21 Q. Okay. You thought that the stock at
22 some points was worth less than its current
23 market price and at other points potentially
24 worth more than its current market price?

25 A. And at other points we thought, well,

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2 we weren't sure but we thought it was worth less
3 on a relative basis than the bonds. So that
4 altogether long bonds and shorted tiny bit of
5 stock was a better trade than just long bonds,
6 probably less bonds, if you will.

7 Q. Okay. And so the options contracts,
8 how do they fit into that strategy?

9 I understand the short position and
10 the long bonds.

11 How does the options --

12 A. We thought it was a good bet that the
13 -- that the likelihood the chance that the stock
14 might be go up multiple 10, 20, 30 times was
15 large enough because there were lots of ways we
16 could imagine based on the filings that it did
17 that we wanted to own the potential -- we wanted
18 to make on the potential that it would go up by
19 multiples.

20 Q. Okay. Overall against the whole
21 portfolio that 683 had with FXCM securities,
22 would it generally -- would 683 Capital's
23 position generally do better if the stock price
24 decreased or increased?

25 A. Always do better if it increased.

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2 Q. Okay. Not withstanding the short
3 sales?

4 A. Correct.

5 Q. And why is that?

6 A. Because it meant the business was
7 worth more. The bonds would have gone up by so
8 much it wouldn't have -- it just wouldn't have
9 mattered for anything that we might have lost on
10 the stock.

11 Q. So do you believe that the bond price
12 and the stock price are correlated?

13 A. To some extent. So, certainly, as a
14 corporate finance matter, they are "correlated,"
15 right, the ultimate value of an enterprise.

16 But, technically, these bonds had
17 convertible features to them, right. They turned
18 into stock at a high enough price, right. So
19 these, in particular, had a correlation. And
20 then --

21 Q. Was that -- was that part of 683's
22 investment strategy is the fact that these bonds
23 could be converted?

24 A. Eventually, yeah. If the stock went
25 way up, business got really back to what it had

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2 Q. And what is your understanding of how
3 your lawyers will get paid in connection with
4 this case?

5 A. On a sliding scale contingency fee.

6 Q. I think we touched on this before,
7 but I just wanted to make sure we wrapped it all
8 up.

9 How did 683 choose its attorneys in
10 connection with this case?

11 A. So we saw that they had filed and
12 then I did research on the firm based on its
13 website, saw which cases they had been involved
14 in, looked at the CVs of the principals at the
15 firm and thought, you know what, these looks like
16 competent, quality, frankly, plaintiffs-like
17 securities lawyers and they're to the party --
18 they're first to the party and they've done
19 similar cases and we -- and I wanted to make sure
20 that the note holders who had big losses
21 including ourselves were included.

22 Q. Did you interview any other firms
23 before selecting your current attorneys?

24 A. I don't recall that I did. I mean,
25 it was very quick process, so that may not be

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2 correct. I just don't recall doing it.

3 Q. Did you solicit any competitive bids
4 from other attorneys?

5 A. No. But I did have some sense as to
6 what -- and we did negotiate a little bit on the
7 sliding fee. And I did chat with another friend
8 of mine from law school who is a plaintiff's
9 attorney as to what fair fees would be and he
10 thought these were fair.

11 Q. Do you know what the hourly billing
12 rate of your attorneys is?

13 A. Again, it's a contingency. So I
14 don't see it as an hourly rate. So, if it turns
15 out -- it will be very dependent as to what the
16 ultimate outcome is. If we realize zero, their
17 fee will be quite low. If we get, you know, a
18 little bit low, their fee will also be quite low
19 per hour. And if we get a great outcome, well,
20 their -- I think their fee will be justifiably
21 quite high.

22 Q. Other than preparation for your
23 deposition, how many times have you physically
24 met with your attorneys in relation to this case
25 to date?

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2 A. Two or three.

3 Q. And how often do you speak with your
4 attorneys about the status of this lawsuit?

5 A. I think we communicate like once
6 every month or two months or so and, certainly,
7 as there's filings or announcements, rulings.

8 Q. As you're aware, because we've gone
9 through some of the documents that you guys
10 produced, we've made discovery requests upon 683
11 Capital.

12 Who at 683 discusses the responses to
13 those requests with your attorneys; is that you
14 or somebody else?

15 A. I refer them to Alan Leibel and
16 people who refer to him and they have been
17 putting them together, to the best of my
18 knowledge.

19 And they've asked me questions like,
20 should we -- you know, does this include it?

21 And I'm, like, tell them, you, know
22 make it as expansive as possible and our
23 attorneys will look at it and see if it's
24 responsive.

25 Q. And who makes the strategy calls in

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2 connection with this litigation at 683?

3 A. I do.

4 Q. Do you discuss it with anybody else?

5 A. No.

6 Q. You don't discuss that with Ari?

7 A. No, he's fine for me to deal with it.

8 He doesn't like confrontation.

9 Q. Has anybody from 683 Capital
10 discussed the strengths and weaknesses of your
11 case with your attorneys?

12 A. You mean other than me?

13 Q. Yeah.

14 A. No.

15 Q. Have you?

16 A. Yes.

17 Q. Okay.

18 MR KIM: There are no "weaknesses."

19 What are you talking about?

20 A. That's what I think but we'll see.

21 Q. Have you discussed the prospects of
22 settlement with your attorneys?

23 A. Only in very general terms.

24 Q. Has your attorneys advanced any cost
25 to 683 Capital?

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2 A. No.

3 Q. Like travel or meals or anything like
4 that?

5 A. No.

6 Q. Do you understand if your agreement
7 to reimburse your attorneys for all costs would
8 be regardless of the outcome of this case?

9 A. No, that's --

10 MR KIM: Objection to form, also,
11 assumes facts.

12 But you can answer the question.

13 A. Yeah, I think they're fronting the --
14 they're paying the costs.

15 Q. Do you have any idea about the
16 magnitude of the costs, are they in thousands,
17 tens of thousands?

18 A. I don't recall if there was a cap or
19 a limitation, but I don't -- I -- I remember
20 believing like if there was -- I remember looking
21 at this and feeling like this was satisfactory
22 that if we got a -- the amount of what I believe
23 was both -- what I hoped/believed was available
24 and merited based on our claims, that we would be
25 better off hiring them than, you know, going

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2 other bankruptcies that I'm involved in right
3 now. I don't think so. There may be some that
4 happened.

5 Oh, there is another one. We're
6 involved in McDermott a little bit. But, again,
7 we own securities. We don't even have lawyers
8 there so...

9 Q. So is that, roughly, five?

10 A. Let's call it five including this
11 one.

12 Q. In your view, is 683 Capital's claims
13 typical of the class of plaintiffs you want to
14 represent?

15 A. Yes.

16 Q. And why is that?

17 A. Because we all owned and believed and
18 bought securities in this company believing it
19 was one thing that it wasn't.

20 Q. Any other reason?

21 A. Well, we all lost money.

22 Q. Anything else?

23 A. We were all probably pretty mad when
24 we saw the press release. I don't know if
25 there's anything else.

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2 MR. ISAJIW: Okay. I'm going to
3 mark, I think, we are up to 18; is that correct?
4 (Deposition Exhibit 18, Defendants'
5 First Requests for Production to Plaintiffs, was
6 marked for identification.)

7 MR. ISAJIW: Ashley, this is 33.

8 A. Downloading. This is another filing
9 in the court? Okay.

10 Q. It's a court -- it's a
11 litigation-related document, but it's not
12 necessarily --

13 A. It's a request, document production
14 request.

15 Q. Just for the record, it's a document
16 titled, "Defendant's First Request for Production
17 to Plaintiffs."

18 A. Okay.

19 Q. Have you seen this document before?

20 A. I don't recall.

21 Q. Did you assist in preparing the
22 response to this document?

23 A. To the extent we provided any
24 responses, there were -- you know, we would have
25 gotten the request from our attorneys and then I

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2 passed it onto my colleagues and said, you know,
3 provide everything to them and they'll figure out
4 what's responsive.

5 Q. And those "colleagues," again, were
6 Mr. Leibel -- Leibel?

7 A. Yeah, he oversees that team
8 basically, yeah.

9 Q. Did you -- in preparation for your
10 deposition, did you talk to Mr. Leibel at all
11 about what 683 Capital did in response to these
12 requests?

13 A. No.

14 Q. Do you know what custodians were
15 searched for responsive information in connection
16 with these requests?

17 A. What do you mean by "custodian"?
18 When I think of "custodian," I think of prime
19 brokerage.

20 You mean something else, I think.

21 Q. I mean, custodians of documents or
22 information that could be potentially relevant.

23 So human beings at 683 Capital who
24 would have e-mail communications or account
25 statements or other documents called for by these

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2 --

3 A. I would -- I believe Alan searched
4 all of our, like, you know, e-mail files and
5 folders and our hard drives, our communal hard
6 drives and personal hard drives.

7 Q. Do you believe that or do you know
8 that because you spoke to Alan and he explained
9 it to you?

10 A. I know -- I told him to do that and I
11 think he said, yeah, I did that. But, like, I
12 didn't actually see him do it. That's why I'm
13 saying belief.

14 Q. I'm just trying to figure out the
15 parameters of the search.

16 So, for instance, were e-mails
17 included in the search for potentially responsive
18 documents?

19 A. It should be and I told him to and he
20 would have. You know, it's not the first time
21 we've looked for documents for something.

22 Q. Okay. Would you have e-mails related
23 to your FXCM investments with anybody else at 683
24 Capital?

25 A. Sure. I assume I do, yeah. Like,

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2 hey, we should buy this or, you know, or not buy
3 this or, hey, did you see this report or...

4 Q. And who would those e-mails be with,
5 most likely?

6 A. Most likely, Ari.

7 Q. Anybody else?

8 A. Could be Ed as well, could be
9 everybody. And to the extent when we were in
10 bankruptcy, I would have sent out a -- and we
11 were restricted, I would have sent out a note to
12 the entire firm, we're restricted, and then when
13 we came out and we weren't restricted, I would
14 have sent it.

15 Q. Okay. Would you use instant
16 messaging at all in connection with your work at
17 683 Capital?

18 A. We -- so we use very little of it.
19 It's possible we did some texting back then. At
20 some point -- I think, it was either early '18 we
21 moved to Slack because it has better instant
22 messaging retention. We, certainly, would have
23 used some instant Bloombergs to do trades, as I
24 explained earlier.

25 The vast majority of what we do is

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2 always on e-mail or verbally.

3 Q. Do you use text messages in
4 connection with work?

5 A. Again, we used to do it more. We do
6 it very little now because Slack has better
7 retention policy -- has better retention
8 capabilities, I should say.

9 Q. What's App?

10 A. Slack.

11 Q. No, okay, sorry. I understand Slack
12 is what you use for electronic communications
13 now.

14 I was asking if you used the
15 application What's App.

16 A. So, as a general matter, for sanity
17 and ethics reasons, I try and use nothing
18 associated with Facebook at any point in my life.

19 Q. Okay.

20 A. I will concede some of my friends
21 like What's App, some of my relatives too. So I
22 use What's App when they insist on using it
23 including my kindergartener's, like, you know,
24 parent's group but...

25 Q. So, in connection with your work at

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2 683 Capital, would you have used What's App to
3 communicate about FXCM investments?

4 A. No.

5 Q. Do you keep a hardcopy file on FXCM
6 at all?

7 A. No.

8 Q. You don't have any printed out papers
9 in connection with your analysis of trading
10 decisions?

11 A. Not that I know of, no.

12 Q. Do you --

13 A. I mean, I might have -- like, way
14 back when if there were any analyst reports, I
15 probably printed them out and read them and then
16 recycled them, but that's to be hyper correct on
17 hardcopies but...

18 Q. Do you know if Ari, for instance,
19 would keep a hardcopy file on FXCM?

20 A. I don't believe so, no.

21 Q. What did 683 Capital do to preserve
22 relevant documents in connection with this
23 litigation?

24 A. I mean, we preserved -- generally, we
25 preserve all our documents.